

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ALLEN DANIEL, #537193,

Plaintiff,

v.

CASE NO. 2:08-CV-13999  
HONORABLE ANNA DIGGS TAYLOR

LORI PAIONTE, et al.,

Defendants.

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**ORDER DENYING PLAINTIFF'S MOTIONS FOR RELIEF TO CURE A RULE 8  
DEFECT AND FOR RELIEF FROM JUDGMENT [DKT. #8 & #9]**

The Court has before it Plaintiff's motions for relief to cure a Rule 8 defect due to excusable neglect and for relief from judgment [Dkt. #8 & #9]. He essentially seeks reconsideration or relief from judgment concerning the Court's October 7, 2008 dismissal of his *pro se* civil rights complaint, filed pursuant to 42 U.S.C. § 1983, as frivolous and for failure to state a claim upon which relief may be granted.

First, to the extent that Plaintiff seeks to cure a defect in his initial pleadings, his motion must be denied as moot given the Court's dismissal of his civil rights complaint. The Court notes that it may not permit Plaintiff to amend his complaint to defeat summary dismissal. *See Baxter v. Rose*, 305 F.3d 486, 488-89 (6th Cir. 2002) (citing *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997)); *see also Clayton v. United States Dep't. of Justice, et al.*, 136 Fed. Appx. 840, 842 (6th Cir. 2005).

Second, to the extent that Plaintiff moves for relief from judgment, he essentially seeks reconsideration of the Court's dismissal of his complaint. However, a motion for reconsideration which presents issues already ruled upon by the district court, either expressly or by reasonable

implication, will not be granted. *See Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Plaintiff has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof as required by Local Rule 7.1(g)(3).

Further, even if the Court considers Plaintiff's motion as one brought pursuant to Federal Rule of Civil Procedure 60(b), he is not entitled to relief. Under that rule, a district court may grant relief from a final judgment or order only upon a showing of one of the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b). Plaintiff has made no such showing. His civil rights complaint was properly dismissed as frivolous and for failure to state a claim upon which relief may be granted under 42 U.S.C. § 1983. Accordingly, Plaintiff's motions are **DENIED**. This case is closed.

**IT IS SO ORDERED.**

s/ Anna Diggs Taylor  
ANNA DIGGS TAYLOR  
UNITED STATES DISTRICT JUDGE

Dated: November 7, 2008

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing Order was served upon Petitioner/Plaintiff by First Class U.S. mail on November 7, 2008.

Allen Daniel, #537193  
Baraga Maximum Correctional Facility  
13924 Wadaga Road  
Baraga, MI 49908

s/Johnetta M. Curry-Williams  
Case Manager